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Supreme Court, U.S.
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No. 00-1438

IN THE

Supreme Court of the United States

JOHNNY REYNOLDS, *et al.*,

Petitioners,

-and-

CECIL PARKER, *et al.*,

Petitioners,

v.

G. M. ROBERTS, in his official capacity as Director of the Alabama Department of Transportation, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS WILLIAM ADAMS, *et al.*

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QUESTIONS PRESENTED

1. Whether there is a split in the circuits on the authority of a district court to issue an injunction upon a finding of civil contempt.

2. Whether counsel in this case was given sufficient due process to show cause why he should not be sanctioned under 28 U.S.C. § 1927 when the matter was remanded to the district court for further proceedings for that very purpose.

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STATEMENT OF THE CASE

A. Early History and Consent Decree I.

The original complaint in this lawsuit was filed on May 21, 1985 by six African-Americans. Plaintiffs alleged that the Alabama Department of Transportation ("ALDOT") and the State Personnel Department ("SPD") had discriminated against them in their employment because of their race. R1-1. The district court later certified three separate plaintiff classes of African-Americans. Pet. App. 4a; R1-82. On November 18, 1993, after a partial trial that lasted for several months, the plaintiffs and defendants tendered a partial settlement to the district court. R4-493. The settlement was embodied in a proposed consent decree that provided for systemic class relief and left the monetary and non-monetary claims of individual class members for subsequent trial. *Id.* At the time that the proposed consent decree was submitted to the district court, the plaintiffs had not yet finished presenting their evidence at trial. Pet. App. 5a. Hence, despite the lengthy trial record developed by plaintiffs, there is no finding of liability for racial discrimination in this case.[1]

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1. Petitioners' representation of district court findings of discriminatory practices is misleading. Petition at 3. The trial record on classwide liability in this case consists of an uncompleted presentation of their case by plaintiffs. Pet. App. 5a. In later proceedings, the district court found that the entry of Consent Decree I constituted a finding of classwide liability. That order was in effect at the time the district court entered the two orders appealed from in this case. In a separate appeal, which is law of the case, the Eleventh Circuit vacated the district court's finding of classwide liability. *Reynolds v. Roberts*, 202 F.3d 1303 (11th Cir. 2000).

Following public notice of the proposed consent decree, a group of non-black ALDOT employees ("the Adams intervenors") filed objections to certain provisions of the proposed consent decree and were granted intervention. *See Reynolds v. Roberts*, 846 F. Supp. 948, 954 (M.D. Ala. 1994); R4-506, R4-520; Pet. App. 6a. The Adams intervenors objected to race-conscious long-term and annual goal provisions requiring 33.3% black representation in all job classifications, "enhanced goal" provisions that carried forward unmet annual goal obligations indefinitely, specific set-asides of engineering positions for competition among black employees only and other race-conscious provisions of the proposed decree. *See* R4-506.

The district court permitted the Adams intervenors to challenge the race-conscious provisions of the proposed decree as intervenors, 846 F. Supp. at 954, and subsequently certified a class of non-black employees to be represented by the named intervenors. *See* R21-2612. The district court also permitted the Adams intervenors to file objections to the race-neutral provisions of the proposed decree, explaining that "the non-class member employees may only challenge the race-conscious provisions of the proposed decree as intervenors, but they may challenge the race-neutral provisions in their capacity as 'objectors' within the meaning of Section 108 of the Civil Rights Act of 1991." 846 F. Supp. at 954 n.8. Because the interrupted trial in the case had included a "vast amount of evidence of the Transportation Department's past employment practices," the district court did not permit the Adams intervenors to present additional factual evidence, but permitted the Adams intervenors to argue based only on evidence already received "that the factual predicate is not sufficient as a matter of law to warrant the type or extent of race-conscious relief contained in the proposed decree." *Id.*

The plaintiffs, defendants, and Adams intervenors subsequently engaged in discovery and negotiated revisions to both race-conscious and race-neutral provisions of the proposed consent decree. With the negotiated revisions, the proposed consent decree was severed into proposed Consent Decrees I, II, and III. Consent Decree I contains classwide remedial provisions that all parties agreed were race-neutral and was entered on March 16, 1994. R6-553. Consent Decrees II and III contain race-conscious provisions and have not been approved or entered by the district court.[2] The renegotiated Consent Decree I was entered on motion of the plaintiffs with the consent of the defendants and Adams Intervenors. Pet. App. 6a, 7a.

Since entry of Consent Decree I, the Adams intervenors have actively participated in the ongoing proceedings in the district court. This litigation over the past seven years has been extensive, including proceedings before the District Judge and all four Magistrate Judges of the Middle District of Alabama. The Adams intervenors have been involved in these proceedings in the district court to the extent that their employment interests are implicated and affected by the race-conscious relief consistently and constantly requested by the plaintiffs. In addition, the intervenors have actively sought to enforce and protect the race-neutral provisions of Consent Decree I to ensure that these remedies work

2. Consent Decrees II and III can be found in the record at R5-533 and R17-1622. The district court entered one paragraph of Consent Decree II on January 23, 1998. R20-2413. The Adams intervenors and the defendants appealed that order and injunction. On May 23, 2001, the Eleventh Circuit reversed. *See Reynolds v. Butts*, no 98-6102, __ F.3d __ (11th Cir. 2001) ("*Reynolds III*). The decision in *Reynolds III* makes clear that, at this time, Consent Decrees II and III are nothing more than plaintiffs' proposals.

effectively and thereby eliminate any need for race-conscious remedies. The district court has effectively taken plenary jurisdiction over all aspects of ALDOT's employment practices, thereby superseding the State merit system operated by SPD.

B. The Grievance-Injunction Proceedings.

Consent Decree I included a provision for the creation of an employee complaint procedure. Pet. App. 8a; R6-553. Shortly after the first grievance procedure was in place,[3] African-American employees of ALDOT began filing grievances alleging violations of Consent Decree I, including claims that they had been assigned duties outside their SPD classifications. The district court processed these grievances through the grievance process and issued injunctive orders requiring ALDOT to provisionally appoint and pay backpay to several black grievants. Pet. App. 11a, 12a; *see also* R16-1512.

On December 12, 1996, Michael Grant, John D'Arville and Andrew McCullough, non-black ALDOT employees, filed grievances under the Revised Grievance Procedure (the "Grant grievances") claiming they had been assigned duties outside their SPD classifications and seeking provisional appointments and backpay — relief similar to that which had been previously awarded to black employees by the district court. Pet. App. 12a, 13a. The district court enjoined these non-black grievances and prohibited ALDOT from

3. The original procedure provided for hearings held by a court-appointed special master followed by review by the district court. Pet. App. 254a. A revised grievance procedure, not involving the court, was approved by the district court on August 9, 1995. Pet. App. 242a, 263a.

granting Grant, D'Arville and McCullough either provisional appointments or backpay pursuant to their grievances in a preliminary injunction order dated April 9, 1997, Pet. App. 14a, 15a; R18-1760. Appeal no. 97-6347 sought review of the preliminary injunction order.

On March 3, 1998, almost one year later, the district court entered an order granting plaintiffs' request for a permanent injunction, to the extent of declaring "that processing the Grant grievances would violate Consent Decree I." This March 3, 1998 order, although framed as declaratory rather than injunctive relief by the district court, effectively prohibited and enjoined ALDOT from processing the Grant grievances. The Adams/Grant intervenors appealed the March 3, 1998 Order and the Supplemental Order dated March 5, 1998, which added language to the March 3, 1998 Order but did not alter the relief granted.

C. The Revised Grievance Procedure Adopted by the Court.

Grant, D'Arville and McCullough filed employee grievances with ALDOT under the Revised Grievance Procedure established pursuant to Article XIX of Consent Decree I and ordered by the district court in its Order and Injunction dated August 9, 1995. Pet. App. 159a, 242a, 263a. The grievance procedure ordered by the court is race-neutral on its face, Pet. App. 9a, and purports to be available to any employee of ALDOT to address claims of racial discrimination and violations of Consent Decree I. Pet. App. 242a-244a.

The grievance procedure is a four-step process. Pet. App. 10a. At Step I the grievance is submitted either to the

employee's immediate supervisor, the Division EEO representative, or if the immediate supervisor is the subject of the grievance, the head of the Division, Bureau or Section. The ALDOT management representative who reviews the grievance at Step I is required to respond to the employee in writing and may offer the employee a proposed resolution of the grievance. Pet. App. 10a, 244a-246a. If the grievance is not resolved at Step I, the process moves to Step II at which time the grievance is submitted to the EEO monitor or his representative for a formal investigation. Pet. App. 247a. At Step II, a meeting must be held between the EEO Monitor or his designee and the grievant, during which a written answer or proposed resolution is given to the grievant. *Id.* The grievance process moves to Step III only "if the grievant has not signed a written acceptance of the proposed resolution . . ." Pet. App. 248a. The Grant grievances were resolved at Step II of the process and therefore did not move to Step III (formal hearing) or Step IV (external arbitration). Pet. App. 248a-250a.

D. The Factual Basis for the Grant Grievances.

The Grant grievants alleged that ALDOT assigned duties to them which are beyond the duties of their State Personnel Department classifications in violation of Consent Decree I and they should therefore receive compensation for those services. Black employees had previously filed similar grievances alleging that they had been required to perform the duties of a higher classification. *See* R16-1512. Finding a violation of Article Fifteen, ¶4 of Consent Decree I, the district court awarded backpay and provisional appointments to the black grievants. *See id.* The Grant grievants alleged that they should not be treated differently than the black employees who had been assigned such out-of-classification

duties and received provisional appointments through the grievance process. Just as black grievants Hudson Hinton and David Lee Sims alleged before them, the Grant grievants asserted that ALDOT's assignment of out-of-classification duties to them without compensation was a violation of Article Fifteen, ¶4 of Consent Decree I. That portion of the decree provides:

> *Duties within the job description*: The Highway Department will monitor the duties and responsibilities performed by employees with the goal of assuring to the extent practicable that at least 90% of the duties and responsibilities performed by employees on a regular or non-emergency basis are within the job description for the job they are holding.

Pet. App. 152a. The evidence presented at the preliminary injunction hearing on March 22, 23, 24 and 25, 1997, established without substantial dispute that Grant, D'Arville and McCullough had been assigned out-of-classification duties without additional compensation.

E. ALDOT'S Resolution of the Grant, D'Arville and McCullough Grievances.

The Grant grievances were filed on December 12, 1996, and submitted to their supervisor. He did not offer the grievants a resolution and the grievances proceeded to Step II. A Step II hearing of the grievances was held on January 15, 1997 by EEO Monitor representative Doug Furlow. Furlow provided each of the grievants with written proposed resolutions of their grievances under Step II of the grievance procedure. Intervenors' Exh. 4 to

March 1997 Injunction Hearing. Furlow's recommendation states that, "It is recommended that Mr. McCullough be offered a provisional appointment to Civil Engineer III with backpay and other benefits including credit for the time-in-grade from April 1994. It is further recommended that Mr. McCullough suffer no retaliation for bringing forth his complaint." Intervenors' Exh. 4 to March 1997 Injunction Hearing. Recommendations for Grant and D'Arville also provided that they be provisionally appointed retroactively to the classifications which their immediate supervisor had recommended for them in April 1994, with backpay from that date. R137-759.

At the conclusion of the announcement of Furlow's recommendations, Ms. Williams, the attorney for the plaintiffs, stated that the plaintiffs had no objection to the recommendation that all three grievants receive provisional appointments. R137-759. Ms. Williams stated that the plaintiffs only objected to the award of backpay if plaintiff class members were not treated similarly in their grievances. Ms. Williams also did not object to Mr. Furlow's authority to offer such recommended resolutions. R137-759.

At the conclusion of the hearing, all grievants signed the resolutions indicating their acceptance. March 1997 Injunction Hearing, Intervenors' Exh. 4. Under the Revised Complaint Procedure, if a grievant accepts the proposed written resolution offered to him at Step II, the grievance process is concluded. Pet. App. 248a.

F. The District Court Orders Enjoining Implementation of the Grievances of Non-Black Employees.

On February 26, 1997, as ALDOT was prepared to implement the Grant, D'Arville and McCullough grievance resolutions awarding backpay and provisional appointments, plaintiffs filed a motion for a temporary restraining order alleging that such action would violate Consent Decree I and related court orders. R17-1585. The district court granted plaintiffs' motion in orders dated February 27 and March 11, 1997, R17-1587 and R17-1644, and conducted evidentiary hearings on March 22-25, 1997. On April 9, 1997, the district court issued a preliminary injunction preventing ALDOT from implementing the Grant grievance resolutions. Pet. App. 205a.

On March 10 and 28, 1997, plaintiffs filed additional motions for temporary restraining orders and preliminary injunction which sought to block the processing of a number of other grievances filed by non-black employees. R17-1635 and Pet. App. 216a. The court treated these as motions for permanent injunctions and set them for final hearing on April 23, 1997. R17-1643 and R18-1726. The district court did not rule on plaintiffs' motion for permanent injunctive relief until March 3, 1998 — almost one year later. R20-2475. Citing anecdotal evidence tendered by plaintiffs in the aborted 1992 trial, Pet. App. 37a-44a, the district court claimed that the Grant grievances "would violate, in ways almost too numerous to list, both Consent Decree I and earlier injunctions in [*United States v.*] *Frazer*." Pet. App. 85a. The district court, in extended discussion, rejected the intervenors' claims that the Grant grievances were brought alleging the very same bases for relief used by the district court in ordering relief on grievances filed by black ALDOT

employees. Pet. App. 67a-85a. The district court conceded that part of its earlier analysis in its orders resolving grievances brought by black employees had been "incorrect and improvidently stated." Pet. App. 85. The court withdrew the "syllogism" upon which it had based relief for black employees, but allowed the relief for the black grievants to stand.

The district court granted plaintiffs' motions for permanent injunctive relief by declaring as follows:

> Provisionally appointing, promoting, or paying backpay to employees Andrew McCullough, Michael Grant, and John D'Arville [the non-black grievants] pursuant to the grievances they filed would violate the consent decree entered on March 16, 1994 (Doc. no. 553) and the orders entered in *United States v. Frazer*, civil action no. 2709-N (M.D. Ala.).

Pet. App. 98a. The district court's 1998 order granted plaintiffs' motions for injunctive relief, prohibiting grievances filed by non-black employees, while allowing nearly identical grievances filed by black employees to proceed to resolution.

G. The Eleventh Circuit's Decision.

The U.S. Court of Appeals for the Eleventh Circuit (Tjoflat and Dubina, C.JJ. and Story, D.J.) vacated both the 1997 preliminary injunction and the 1998 declaratory judgment and directed the district court to restore the *status quo ante*. Pet. App. 3a.

The appeals court vacated the preliminary injunction finding that the Grant grievance "resolutions injured no member of a plaintiff class on account of race or in any other way." Pet. App. 20a. Hence, the plaintiffs lacked standing to seek injunctive relief and "plaintiffs' counsel were proceeding strictly on their own . . . bent on preventing the three white grievants from obtaining provisional appointments and backpay." Pet. App. 21a. The appeals court further observed that plaintiffs' counsel's actions seeking an injunction against matters which caused their clients no harm was an "abuse [of the judicial process] as gross as any we have encountered." Pet. App. 21a.

In vacating the declaratory judgment, the Eleventh Circuit observed that it is without dispute that Consent Decree I only provided "race-neutral prospective relief," and that Article 19 plainly required ALDOT to adopt a grievance procedure that ". . . would be made available to everyone, including a non-black." Pet. App. 22a-23a. The race-neutral grievance procedure was approved by the plaintiffs' counsel as well as the district court, "and thus made it an amendment to Consent Decree I." Pet. App. 23a. The appeals court found that plaintiffs' counsel's claim that the non-blacks' invocation of the grievance procedure violated Consent Decree I "is more than sophistic; it is preposterous." *Id.* The court found that counsel's efforts were designed to modify the grievance procedure as grafted into Consent Decree I without seeking relief on a "legally-recognized ground for vitiating contracts." *Id.* The appeals court found it necessary to instruct counsel and the district judge that consent decrees are contracts and the district court must uphold an unambiguous decree as written. Pet. App. 24a. Here, the appeals court found that the district judge's decision to enter a declaratory judgment

was, in effect, an impermissible modification of an unambiguous contract requiring race-neutral application of the grievance procedure. Pet. App. 24a, 25a.

Finally, consistent with its findings that the efforts of plaintiffs' counsel to obtain an injunction were an abuse of process, Pet. App. 21a, and counsel's arguments that the grievants use of the grievance procedure violated Consent Decree I were "sophistic" and "preposterous", Pet. App. 23a, the Eleventh Circuit further found that counsel invited the district court's error in its entry of the preliminary injunction and then attempted to defend the district court's ruling on appeal with baseless arguments. Pet. App. 26a. The appeals court found that it had authority to award sanctions under 28 U.S.C. § 1927 and directed the district court, on remand, to "enabl[e] plaintiffs' counsel to show cause why section 1927 sanctions should not be awarded to the Adams Intervenors." Pet. App. 27a.

REASONS FOR DENYING THE WRIT

Petitioners claim that review should be granted to address: (1) an alleged circuit conflict on the means available to a district court to enforce a consent decree; (2) whether petitioners' counsel was denied due process when the appeals court directed that counsel show cause why sanctions should not be imposed; (3) whether the appeals court's rejection of the district court's findings of fact was beyond its authority; and (4) whether the appellate court exceeded its authority in directing the district court to restore the *status quo ante*.

Petitioners have not demonstrated any error by the Court of Appeals that warrants review by this Court. First, there is no circuit split on the means by which a district court may

enforce an injunctive consent decree. The Eleventh Circuit recognized that the proper way to enforce an injunction is through the contempt power of the district court. Pet. App. 18a, 19a. The court never said that any other relief is forbidden. Rather, the court said that the entry of injunctive relief here was inappropriate when plaintiffs had not sought contempt enforcement, plaintiffs had no standing to seek an injunction, and plaintiffs' argument that the Grant grievances violated Consent Decree I was "preposterous" given the plain language of the earlier orders.

Second, the issue of sanctions is not ripe for this Court's review as further proceedings directed to this issue are ongoing in the lower courts. Third, petitioners have made no demonstration that the appeals court's rejection of district court findings that have no basis in the record warrants review by this Court. Finally, the suggestion that this Court must act to avoid the "vacating of scores of district court orders," is a blatant and intentional misinterpretation of the Eleventh Circuit's decision that nobody has seriously suggested in the ongoing proceedings in the district court.

I. The Court of Appeals Correctly Recognized The General Rule That Injunctions Are Enforced Through The Court's Contempt Powers.

In its decision vacating the injunctive and declaratory relief ordered by the district court, the Court of Appeals stated that "injunctions, including consent decrees, are to be enforced . . . through the trial court's civil contempt power." Pet. App. 18a. The district court's decision also acknowledges this rule. Pet. App. 92a, 93a. Petitioners allege that the Court of Appeals held that "the District Court below did not have the power to enter its preliminary injunction and declaratory

judgment." Petition at 12. The appellate court made no such finding. Rather, it found that the plaintiffs failed to seek contempt relief and instead sought and received injunctive relief when they were not entitled to any such relief *on the merits*. Petitioners' effort to cobble together an issue worthy of certiorari review is disingenuous.

The Eleventh Circuit vacated the preliminary injunction finding that plaintiffs lacked standing to seek such relief. The grievance "resolutions injured no member of a plaintiff class on account of race or in any other way." Pet. App. 20a. Rather, the court found that plaintiffs' counsel was "bent on preventing the three white grievants from obtaining provisional appointments and back pay." *Id.* 21a. "Because [plaintiffs] suffered no injury that would warrant relief . . . plaintiffs' counsel lacked standing to prosecute their application for a preliminary injunction." *Id.*

Similarly, the Eleventh Circuit vacated the "declaratory judgment" finding that it was effectively a modification of a permanent injunction[4] transforming the race-neutral grievance procedure into a procedure that was only available for black employees. Pet. App. 23a, 24a. On that basis, the appeals court instructed that a district court is obligated to uphold the unambiguous language of a consent decree. *Id.* 24a.

While the Eleventh Circuit did say that "an application for injunctive relief is an inappropriate device for enforcing a consent decree," *id.*, it did not hold that the district court lacked jurisdiction to ever enter an injunction under appropriate circumstances. Given its disposition of the case

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4. *See* Pet. App. 16a, n.17.

on the basis of standing as well as the merits of the injunction, the Court of Appeals had no reason to address whether an injunction could ever issue in the course of contempt proceedings. But, an injunction is not an alternative procedure to invocation of the court's contempt power.

Nor have the petitioners demonstrated a conflict in the decisions of other circuits. *Berger v. Heckler*, 771 F.2d 1556 (2d Cir. 1985) is a case that addresses a district court's authority in civil contempt proceedings. In *Berger*, the plaintiff filed a motion for contempt and demonstrated that the Secretary of HHS refused to comply with a prior consent decree governing eligibility for federal Supplemental Security Income ("SSI") benefits. 771 F.2d at 1562. Because the original decree was entered in a case without a certified class, the Secretary argued that similarly situated persons could not enforce the decree. Finding that the Secretary had refused to obey the decree, and further finding that the Secretary intended to limit the decree's benefits only to persons in the Eastern District of New York, the district court determined that further injunctive relief was necessary to ensure that the decree protected the interests of all similarly situated persons entitled to SSI benefits. Under such circumstances, the district court's injunction was justified in fashioning "full remedial relief" for the Secretary's contempt. 771 F.2d at 1568-69.

In *Gates v. Collier*, 616 F.2d 1268, 1271 (5th Cir. 1980), the Fifth Circuit first found noncompliance with a prior order and noted that "the court may use any of the weapons generally at its disposal to ensure compliance." *Brewster v. Dukakis*, 675 F.2d 1 (1st Cir. 1982) was not a case involving issues of compliance by a defendant. Rather, it involved an effort to seek clarification of the decree "under the court's

power to interpret the decree . . ." The First Circuit stated that "on the periphery of the court's power to interpret is also a limited power to issue injunctive relief which may be used to protect rights and enforce duties once they have been clarified." *Id.* at 3. The Eleventh Circuit said nothing that conflicts with that ruling.

None of the other cases cited by petitioners demonstrate a split between the circuits. Rather, the courts acknowledge the proposition that the party seeking to enforce a consent decree should demonstrate a violation of the decree through the court's contempt power. Upon a demonstration of noncompliance, or in other words, civil contempt, the district court is required to fashion appropriate limited relief to ensure that the respondent promptly comes into compliance. Such a rule has been recognized for over 180 years. *See Spallone v. United States*, 493 U.S. 265, 276 (1990) ("'least possible power adequate to the end proposed,'" quoting *Anderson v. Dunn*, 6 Wheat 204, 5 L. Ed. 242 (1821)).

The Eleventh Circuit has not departed from the well recognized principle that a district court must fashion appropriate relief to redress violations of an unambiguous order. For that reason, it has reconfirmed that the appropriate and accepted procedure for raising instances of noncompliance is through invocation of the court's contempt powers. In this case, however, the petitioners followed a different course. Rather than prove noncompliance — which they could not do given the unambiguous provisions of the prior orders — they sought an injunction. In reality, as the Eleventh Circuit observed, the injunction sought was a modification or reformation of the earlier orders establishing race-neutral procedures. The Eleventh Circuit recognized that the district court retained the power to modify the injunctive

orders as necessary under the law governing interpretation or reformation of contracts and injunctions. Pet. App. 23a-25a. Nothing in the Eleventh Circuit's decision restricts the right of a district court to clarify or modify a consent decree. *See Rufo v. Inmates of Suffolk Court Jail*, 502 U.S. 367 (1992). But, a district court cannot unilaterally modify a decree in the context of an application for declaratory or injunctive relief.

Petitioners have failed to demonstrate how the Eleventh Circuit's decision varies from settled law of the other circuits or this Court to warrant review.

II. Counsel Has Not Been Denied Due Process.

Petitioners' counsel alleges he was denied due process when the Eleventh Circuit found that his actions in the district court and on appeal were an abuse of the judicial process and sanctionable under 28 U.S.C. § 1927. Again, counsel has made no demonstration that the Eleventh Circuit's decision warrants review by this Court.

As the Eleventh Circuit made clear, "counsel subject to section 1927 sanctions are entitled to be heard regarding the matter . . ." Pet. App. 27a. The appeals court directed the district court to give counsel such an opportunity to "show cause why section 1927 sanctions should not be awarded to the Adams Intervenors." *Id.*

On remand, counsel assembled a task force of lawyers to ensure that due process was obtained. Following discovery, counsel filed a voluminous submission together with several briefs. U.S. District Judge Ira DeMent entered an order providing, in relevant part:

> Having been assigned to the undersigned (Doc. No. 4438), the court, as instructed by the Eleventh Circuit, has given Plaintiffs' counsel an opportunity to be heard on the issue of whether or not § 1927 sanctions should be assessed against them and awarded to the Adams intervenors. Plaintiffs' counsel filed briefs and a smorgasbord of evidentiary materials, including affidavits, depositions and a 19.5 pound box of exhibits. The court has reviewed the voluminous pleadings, exhibits, motions and orders filed on the sanctions issue. The court concludes that neither further briefing, oral argument nor an evidentiary hearing are necessary.
>
> In accordance with the opinion of the Eleventh Circuit, the court hereby ORDERS the Clerk of the Court to certify the following pleadings and all exhibits attached thereto to the Eleventh Circuit . . .

Order, March 28, 2001 (doc. no. 4889). Counsel then filed a notice of appeal, thereby returning the sanctions issue to the Eleventh Circuit where it now resides and awaits further proceedings. Respondents believe this Court should not address the issue of sanctions, especially in the context of due process, until the matter is finally concluded in the lower courts.

III. The Eleventh Circuit Was Well Within Its Authority In Rejecting The District Court's Findings.

Petitioners claim the Court of Appeals acted outside its authority in rejecting the district court's findings. Again, petitioners offer nothing to warrant review by this Court.

The Eleventh Circuit's decision turned on several important yet limited findings that were well within its authority:

- Plaintiffs lacked standing to seek a preliminary injunction because nothing in the grievance resolutions injured any member of the plaintiff class. Pet. App. 17a, n.18 and 20a. Rather, such resolutions constituted make-whole relief for violations of Consent Decree I.

- The plain language of Consent Decree I and the Revised Grievance Procedure are race-neutral and both black and non-black employees are entitled to the benefits and protections of those orders. *Id.* 22a-24a.

- Because the orders were unambiguous, the trial court's consideration of extrinsic evidence was erroneous. *Id.* 24a, 25a, n.23. Hence, the "findings" based on that evidence were inappropriate.

None of the foregoing matters are purely factual findings subject to the clearly erroneous standard of Fed. R. Civ. P. 52(a). There is certainly nothing in the appellate court's evaluation of the record worthy of certiorari review.

IV. Nothing In The Eleventh Circuit's Decision Overturns Orders Not On Appeal.

Petitioners frivolously assert that chaos has ensued from the appellate court's direction to "restore the *status quo ante*." Petitioners are "crying wolf." After the issuance of the mandate, the district court properly complied by vacating

the orders on appeal and restoring the *status quo* with respect to the matters at issue in this appeal. But, to suggest that any party or the district court construed the appellate court's direction to require the vacation of four years of proceedings involving numerous other issues not before the Court of Appeals — thousands of documents — is absolutely false. Nothing of the sort has occurred. Moreover, nothing on this point is worthy of certiorari review.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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